



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8  
999 18<sup>TH</sup> STREET - SUITE 300  
DENVER, CO 80202-2466  
Phone 800-227-8917  
<http://www.epa.gov/region08>

MAY 13 2005

Ref: 8ENF-L

SENT VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Bobby Davis, Registered Agent for  
Am West Petroleum, Inc.  
1508 Pine Street  
Upton, WY 82730

Re: In the Matter of: Am West Petroleum, Inc.  
Docket No. **CWA-08-2005-0019**  
Administrative Complaint and Notice of Opportunity for Hearing

Dear Mr. Davis:

Enclosed is an Administrative Complaint and Notice of Opportunity for Hearing ("Complaint") filed by the U.S. Environmental Protection Agency ("EPA") against Am West Petroleum, Inc., pursuant to its authority under section 311(b)(6)(B)(ii) of the Clean Water Act (the "Act"), 33 U.S.C. §1321(b)(6)(B)(ii). EPA alleges in the Complaint that Am West Petroleum, Inc.'s Eitel 10-24 and Wood Tank Battery #1 facilities located in Crook County, Wyoming (hereinafter, "the facilities") are in violation of the oil pollution prevention requirements set forth at 40 CFR part 112 and section 311(b)(6)(A) of the Act, 33 U.S.C. §1321(b)(6)(A).

Specifically, the Complaint alleges that Am West Petroleum, Inc., failed to prepare and implement a Spill, Prevention, Control and Countermeasure ("SPCC") plan for its facilities in accordance with 40 CFR §§112.7 and 112.9 as required by 40 CFR §112.3. EPA discovered the violations during an unannounced SPCC inspection of the facilities on September 14, 2004. The Complaint proposes a total penalty up to \$54,959. This proposed administrative civil penalty represents a proposed assessed penalty of \$23,698 for violations at the Wood Tank facility and \$31,261 for violations at the Eitel facility.

You have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or the allegations are found to be true after you have had an opportunity for



a hearing, you have the right to contest the penalty proposed in the Complaint. A copy of EPA's administrative procedures is enclosed for your review. Please note the requirements for an answer set forth in 40 C.F.R. §§22.15 and 22.38. If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file a written answer within thirty (30) days of receipt of the enclosed Complaint with the EPA Regional Hearing Clerk at the following address:

Ms. Tina Artemis, Regional Hearing Clerk (8RC)  
U.S. EPA, Region 8  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202-2466

If you fail to request a hearing, you will waive your right to formally contest any of the allegations set forth in the Complaint. If you fail to file a written answer or pay the proposed penalty within the time limits, a default judgement may be entered pursuant to 40 CFR §22.17. This judgement may impose the penalty proposed in the Complaint.

Whether or not you request a hearing, you may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. You have the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA, but it is not required. A request for an informal conference does not extend the thirty (30) day period for filing your Answer and/or requesting a hearing. Public Notice of and reasonable opportunity to comment on the proposed issuance of an order assessing a class II civil penalty is being provided pursuant to section 311(b)(6)(C) of the Act, 33 U.S.C. §1321(b)(6)(C). If no hearing is held under section 311(b)(6)(B) of the Act, 33 U.S.C. § 1321(b)(6)(B), any person who comments on the proposed penalty assessment may participate in a hearing on the penalty if requested pursuant to section 311(b)(6)(C)(iii) of the Act, 33 U.S.C. §1321(b)(6)(C)(iii).

If you have any questions, the most knowledgeable people on my staff regarding this matter are Brenda Morris and Jane Nakad. Ms. Morris is in our Legal Enforcement Program and can be reached at (303) 312-6891. Ms. Nakad is in our Technical Enforcement Program and can be reached at (303) 312-6202.

We urge your prompt attention to this matter.

Sincerely,



Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosures: Complaint and Notice of Opportunity for Hearing  
Consolidated Rules of Practice, 40 C.F.R. Part 22  
SBREFA Information Sheet  
Notice of SEC Disclosure  
Public Notice  
Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water  
Act, dated August, 1998.  
EPA Supplemental Environmental Projects Policy, dated May 1, 1998

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8  
999 18th Street, Suite 300  
Denver, CO 80202-2466

**PUBLIC NOTICE OF  
PROPOSED ADMINISTRATIVE PENALTY ASSESSMENT  
AND OPPORTUNITY TO COMMENT ON CWA CLASS II  
OPA ADMINISTRATIVE COMPLAINT**

**Action:** EPA is providing notice of a proposed administrative penalty assessment and the opportunity to comment on the proposed assessment.

**Summary:** EPA is authorized under section 311(b)(6) of the Clean Water Act ("Act"), 33 U.S.C. §1321(b)(6), to issue orders assessing civil penalties for violations of the Act after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons public notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under section 311(b)(6), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of section 311(b)(3) of the Clean Water Act, 33 U.S.C. § 1321(b)(3), and who fails or refuses to comply with any regulations that have been issued under section 311(j) of the Clean Water Act, 33 U.S.C. §1321(j)] may be administratively assessed a civil penalty of up to \$137,500 by EPA.

Class II proceedings under section 311(b)(6) of the Act are conducted in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits", 40 CFR part 22 ("Part 22"). The procedures by which the public may submit written comments on a proposed Class II penalty order or participate in a Class II penalty proceeding are set forth in Part 22. The deadline for submitting public comment on a proposed Class II order is forty days after issuance of public notice.

Pursuant to section 311(b)(6)(C) of the Act, 33 U.S.C. §1321(b)(6)(C), EPA is providing public notice of the following proposed Class II administrative penalty assessment:

Name and address of respondent:	Am West Petroleum, Inc. 1508 Pine Street Upton, WY 82730
Location of alleged violations:	Eitel 10-24 and Wood tank batteries Crook County, Wyoming
Business or activity of respondent:	Oil Production

Nature of alleged violations:

- Count 1. Failure to prepare and implement a Spill Prevention Control and Countermeasures Plan in accordance with 40 CFR part 112 in violation of section 311(j) of the Clean Water Act at the Eitel 10-24 tank battery
- Count 2. Failure to prepare and implement a Spill Prevention Control and Countermeasures Plan in accordance with 40 CFR part 112 in violation of section 311(j) of the Clean Water Act at the Wood tank battery.

Proposed penalty: \$54,959.00

Docket Number: number to be added

Date filed with Regional Hearing Clerk: date to be added

Name, mailing address, and telephone number of Regional Hearing Clerk:

Tina Artemis  
Regional Hearing Clerk (8RC)  
EPA Region 8  
999 18th Street, Suite 300  
Denver CO 80202-2466  
303-312-6765

**FOR FURTHER INFORMATION:** Persons wishing to receive a copy of Part 22, review the Complaint or other documents filed by the parties in this proceeding, comment upon the proposed penalty assessment, or participate in any hearing that may be held, should contact the Regional Hearing Clerk identified above. Unless otherwise noted, the administrative record for the proceeding is located in the EPA Regional Office identified above and the file will be open for public inspection during normal business hours.

In order to provide opportunity for public comment, EPA will not take final action in this proceeding prior to forty days after issuance of this notice.

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY** 2005 MAY 13 AM 9:32  
**REGION 8**

IN THE MATTER OF: )

Docket No. CWA-08-2005-0019

FILED  
EPA REGION VII  
HEARING CLERK

AM West Petroleum, Inc. )

**ADMINISTRATIVE COMPLAINT AND  
OPPORTUNITY TO REQUEST HEARING**

P.O. Box 871 )

Upton, WY 82730 )

Respondent. )

Proceeding to Assess Class II Civil Penalty  
Under Section 311 of the Clean Water Act

**AUTHORITY**

1. This is a civil administrative action issued under the authority vested in the Administrator of the Environmental Protection Agency ("EPA") by section 311(b)(6)(B)(ii) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. §1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990. The Administrator has properly delegated this authority to the undersigned EPA official. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules") set forth at 40 CFR part 22, a copy of which is enclosed.

**GENERAL ALLEGATIONS**

2. Respondent, AM West Petroleum, Inc., is a corporation organized under the laws of Wyoming, and a "person" within the meaning of sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§1321(a)(7) and 1362(5).

3. The Respondent owns and operates the Eitel 10-24 facility located in Section 24, Township 51N, Range 68W, and the Wood Tank Battery #1 facility located in Section 13,

Township 51N, Range 68W (hereinafter, "the Eitel facility" and the "Wood Tank facility") located in Crook County, Wyoming.

4. The Eitel facility includes, but is not limited to, four 400 barrel tanks containing crude oil, a pump jack, an oil/water separator and three ponds, one of which was approximately 20% oil-covered and had oil-stained banks.

5. The Wood Tank facility includes, but is not limited to, a heater treater, one 400 barrel and two 500 barrel crude oil tanks, and two ponds, one of which was approximately 15% oil-covered.

6. Crude oil is an oil within the meaning of "oil" as defined at §311(a)(1) of the Act, 33 U.S.C. §1321(a)(1).

7. Respondent drills, produces, gathers, stores, processes, refines, transfers, distributes, uses or consumes oil or oil products at the Eitel facility and the Wood Tank facility (hereinafter, "the facilities").

8. Respondent is now, and was at the time of the inspection, an "owner and operator" of two oil production "onshore facilities" within the meaning of sections 311(a)(6) and (10) of the Act, 33 U.S.C. §§1321(a)(6) and (10).

9. The facilities are "non-transportation related" onshore facilities within the meaning of 40 CFR §112.2.

10. The Eitel facility has a total oil storage capacity of approximately 77,700 gallons, not including the capacity of any of the ponds.

11. Drainage from the Eitel facility flows .07 miles west to the Miller Creek, an intermittent stream.

12. The Wood Tank facility has a total oil storage capacity of approximately 69,300 gallons, not including the capacity of any of the ponds.

13. Drainage from the Wood Tank facility flows into a drainage ditch located approximately 50 feet from the tanks and drains into the Miller Creek, approximately .17 miles from the facility.

14. The drainage ditch and the Miller Creek are “navigable waters” and “waters of the United States” within the meaning of section 502(7) of the Act, 33 U.S.C. §1362(7) and 40 CFR §110.1.

15. Section 311(j)(1)(C) of the Act, 33 U.S.C. §1321(j)(1)(C), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil ... from vessels and from onshore and offshore facilities, and to contain such discharges ...."

16. EPA promulgated the oil pollution prevention regulations, set forth at 40 CFR part 112. 40 CFR §112.1(b) states that the requirements of part 112 apply:

to owners or operators of non-transportation related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities, as defined in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines ...."

17. The facilities are non-transportation onshore facilities which, due to their locations, could reasonably be expected to discharge oil to a navigable water of the United States (as defined by section 502(7) of the Act, 33 U.S.C. §1362(7), and 40 CFR §110.1) or its adjoining shoreline that may either (1) violate applicable water quality standards or (2) cause a



film or sheen or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

18. The facilities are subject to the oil pollution prevention requirements of 40 CFR part 112, pursuant to section 311(j) of the Act, 33 U.S.C. §1321(j), and its implementing regulations.

19. 40 CFR §112.3 requires that owners or operators of onshore facilities prepare a Spill Prevention, Control, and Countermeasure ("SPCC") plan in accordance with applicable sections of part 112, including, but not limited to, sections 112.7 and 112.9.

20. Section 311(b)(6)(A) of the Act, 33 U.S.C. §1321(b)(6)(A), states in pertinent part that any owner, operator, or person in charge of any vessel, onshore facility or offshore facility who fails or refuses to comply with any regulation issued under subsection (j) of this section to which that owner, operator, or person in charge is subject, may be assessed a class I or class II civil penalty by ... the Administrator.

21. On or about September 14, 2004, EPA conducted an unannounced SPCC inspection ("the Inspection") of the facilities.

22. The following SPCC measures were found to be deficient at the Eitel facility at the time of the Inspection:

- a. Failure to provide adequate secondary containment for bulk tanks in accordance with 40 CFR §112.9(c);
- b. Failure to provide adequate secondary containment for truck loading/unloading area in accordance with 40 CFR §112.7(c); and
- c. Failure to remove oil from sumps, skimmers, and traps in accordance with 40 CFR §112.9(b)(2).

23. The following SPCC measures were found to be deficient at the Wood Tank facility at the time of the Inspection:

- a. Failure to provide adequate secondary containment for truck loading/unloading area in accordance with 40 CFR §112.7(c);
- b. Failure to remove oil from sumps, skimmers, and traps in accordance with 40 CFR §112.9(b)(2);
- c. Failure to remove accumulated oil from secondary containment in accordance with 40 CFR §112.9(b)(1);
- d. Failure to train operating personnel on the maintenance of equipment to prevent discharges in accordance with 40 CFR §112.7(f);
- e. Failure to provide drainage from undiked areas to catchment basin or holding area; and
- f. Failure to inspect piping and valves in accordance with 40 CFR §112.9(d).

24. The Respondent failed to prepare and implement a SPCC plan for the facilities in accordance with the regulations at 40 CFR §§112.7 and 112.9 as required by 40 CFR §112.3.

25. Respondent's failure to prepare and implement a SPCC plan in accordance with the regulations at 40 CFR §§ 112.7 and 112.9 from September, 2004, through and including March, 2005, (a duration of approximately six (6) months) for the Eitel and Wood Tank facilities constitutes violations of 40 CFR §112.3 and sections 311(b)(6)(A), 33 U.S.C. §1321(b)(6)(A), and 311(j)(1)(C), 33 U.S.C. §1321(j)(1)(C) of the Act.

#### **PROPOSED PENALTY**

26. Based on the foregoing Allegations and pursuant to the authority of section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. §1321(b)(6)(B)(ii), Complainant proposes the assessment of administrative penalties against the Respondent in the amount of \$54,959. This proposed

administrative civil penalty represents a proposed assessed penalty of \$23,698 for violations at the Wood Tank facility and \$31,261 for violations at the Eitel facility.

27. Complainant proposes this penalty amount after considering the applicable statutory penalty factors in section 311(b)(8) of the Act, 33 U.S.C. §1321(b)(8): Respondent's alleged violations, the seriousness of the violations, the economic benefit to the violator resulting from the violations, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other factors as justice may require.

28. Specifically, the proposed penalty amount is based on Respondent's moderate non-compliance and moderate environmental impact for a duration of at least six months with a major degree of culpability at both facilities.

29. A moderate non-compliance category was selected for the facilities based on the alleged violations stated in paragraphs 22 and 23, *supra*. Cumulatively, the violations alleged have a significant impact on the ability of the Respondent to prevent or respond to worst case spills through the development and implementation of a plan.

30. The potential environmental impact from a discharge would be moderate based upon the proximity to water, the inadequacy of the containment, and additionally at the Eitel facility, the dead oil-covered bat and nest of broken eggs found between the two ponds. Drainage from the Eitel facility flows .07 miles west to the Miller Creek, an intermittent stream, and

drainage from the Wood Tank facility flows into a drainage ditch located approximately 50 feet from the tanks and drains into the Miller Creek, approximately .17 miles from the facility.

31. The proposed penalty takes into account the Respondent's history of non-compliance for violations that have occurred within the past five years and culpability of the Respondent by assessing the degree to which the Respondent should have been able to prevent the violations, the resources and information available to the Respondent, and the sophistication of the Respondent. On September 30, 1997, EPA conducted an SPCC inspection at the Eitel facility which resulted in the issuance of a Notice of Violation on October 21, 1999, for inadequate secondary containment around the bulk tanks, no containment for loading and unloading areas, rusted tanks, leaking valves, and oil-soaked soil. During that time, Respondent was made aware of the regulations and available resources, provided feedback on the issues specific to its facility's concerns, and given EPA personnel to contact for future regulatory issues. Respondent's proposed penalty in this Complaint was increased significantly based upon the culpability factor as a result of its failure to address identical non-compliance issues observed in 2004, and Respondent's level of sophistication resulting from the compliance assistance provided in the 1997-1999 time-frame. Additionally, Respondent's penalty was increased by 10% for its history of non-compliance.

32. The Respondent did not qualify for any penalty reduction based on mitigation factors. No additions were made to the proposed penalty amount based on economic benefit.

### **TERMS OF PAYMENT FOR QUICK RESOLUTION**

If Respondent does not contest the findings and penalty proposal set out above, this action may be resolved by paying the proposed penalty in full pursuant to 40 CFR §22.18. If such payment is made within thirty (30) calendar days of receipt of this Complaint, no Answer need be filed. For more time for payment, Respondent may file a statement agreeing to pay the penalty within 30 days of receipt of the Complaint, then pay the money within 60 days of such receipt. Payment is to be made by sending a cashier's or certified check **payable to "Oil Spill Liability Trust Fund,"** with the docket number and name of the facility written on the check, to:

Jane Nakad  
Technical Enforcement Program (8ENF-UFO)  
U.S. EPA Region 8  
999 18th Street, Suite 300  
Denver, CO 80202-2466

Payment of the penalty in this manner does not relieve Respondent of its obligation to comply with the requirements of the statute and regulations. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

### **OPPORTUNITY TO REQUEST A HEARING**

As provided in the Act, a Respondent has the right to a public hearing to contest this Complaint. If you (1) contest the factual claims made in this Complaint; (2) contest the appropriateness of the proposed penalty; and/or (3) assert that you are entitled to judgment as a matter of law, you must file a written Answer in accordance with section 22.15 and 22.38 of the Consolidated Rules within 30 calendar days after receipt of this Complaint. Your Answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the

Complaint with regard to which you have knowledge; (2) state circumstances or arguments which are alleged to constitute grounds for defense; (3) state the facts you dispute; (4) the basis for opposing the proposed relief, and (5) specifically request an administrative hearing, if desired. Failure to admit, deny, or explain any material factual allegation in this Complaint will constitute an admission of the allegation.

The Answer and one copy must be sent to:

Tina Artemis, Regional Hearing Clerk (8RC)  
U.S. EPA Region 8  
999 18th Street, Suite 300  
Denver, Colorado 80202-2466

and a copy must be sent to the following attorney:

Brenda Morris, Enforcement Attorney (8ENF-L)  
U.S. EPA Region 8, Legal Enforcement Program  
999 18th Street, Suite 300  
Denver, CO 80202-2466  
Telephone: (303) 312-6891

IF YOU FAIL TO REQUEST A HEARING, YOU WILL WAIVE YOUR RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF YOU FAIL TO FILE A WRITTEN ANSWER OR PAY THE PROPOSED PENALTY WITHIN THE 30 CALENDAR DAY TIME LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 CFR §22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THE COMPLAINT.

### **PUBLIC NOTICE**

Pursuant to section 311(b)(6)(C) of the Act, 33 U.S.C. §1321(b)(6)(C), the Complainant is providing public notice of and reasonable opportunity to comment on this proposed issuance of a Final Order assessing administrative penalties against you. If a hearing is held on this matter,

members of the public who submitted timely comments on this proceeding have the right under section 311(b)(6)(C) of the Act, 33 U.S.C. §1321(b)(6)(C), to be heard and present evidence at the hearing.

### **SETTLEMENT CONFERENCE**

The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations and is willing to explore this possibility in an informal settlement conference. If you or your attorney, if you choose to be represented by one, have any questions or wish to have an informal settlement conference with EPA, please call Brenda Morris at (303) 312-6891. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in the Consolidated Rules. If a settlement can be reached, its terms must be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Regional Judicial Officer.

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8**  
Complainant.

Date:

5/12/2005



Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

In The Matter of: Am West Petroleum, Inc.  
(Continued)

Date:

5/13/05

Brenda L Morris  
Brenda Morris, Enforcement Attorney  
U.S. EPA, Region 8  
999 18<sup>th</sup> Street, Suite 300 (8ENF-L)  
Denver, CO 80202-2466

Telephone: 303/312-6891  
Facsimile: 303/312-6953



## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING was hand-carried to the Regional Hearing Clerk, EPA Region 8, 999 18<sup>th</sup> Street, Suite 300, Denver, Colorado, and that a true copy of the same was sent via certified mail to:

Mr. Bobby Davis, Registered Agent for  
Am West Petroleum, Inc.  
1508 Pine Street  
Upton, WY 82730

5/13/05  
Date

B Morris for  
Judith McTernan